



PATENT
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Technology Center 2100

In re Application of:)
)
Ryuichiro YOSHIMURA et al.)
)
Application No.: *10/606,831* ~~To be assigned~~)
)
Continuation of U.S. Application No.: 08/820,254) Group Art Unit: Unassigned
filed on March 18, 1997)
)
Filed: June 27, 2003) Examiner: Unassigned
)
For: INFORMATION RECORDING MEDIUM)
AND APPARATUS FOR RECORDING)
THE SAME)

Commissioner for Patents
U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window, Mail Stop Patent Application
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Sir:

PETITION UNDER 37 C.F.R. § 1.182 FOR AN OBJECTIVE EXAMINER

Pursuant to 37 C.F.R. § 1.182, Applicants hereby respectfully petition the Commissioner to assign this new Continuation application to an Objective Examiner (i.e., an Examiner other than Examiner David L. Robertson of Art Unit 2186) in light of certain improper and highly prejudicial comments appearing, for example, in the Office Action dated May 7, 2002 (paper no. 21), and in the Office Action dated December 4, 2002 (paper no. 25) in the parent application no. 08/820,254 made by Examiner Robertson. This Petition is being filed concurrently with this new Continuation application which claims priority to the parent application 08/820,254 under 35 U.S.C. § 120.

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During the prosecution of the parent application, Examiner Robertson has shown himself to be unduly prejudiced and, accordingly, not objective in his examination of the application. For example, certain comments appear in the Office Action identified above that are improper and highly prejudicial to the file history. In particular, in response to Applicants' good faith proposal to label certain figures as "related art" instead of "prior art," the Examiner states in the Office Action, on page 2, line 3, that "Applicants' continued attempts to obfuscate what qualifies as prior art are noted." Used in this manner, the term "obfuscate" has a strong negative connotation that implies improper action by Applicants.

A more serious example of improper statements appears in the Office Action on page 14, lines 5-8. In this instance, in reference to Applicants' August 29, 2001 response to a Rule 105 Requirement for Information in which Applicants stated "the requested document is not readily available to, and cannot be readily obtained by, the Applicants or Assignee of this application," the Examiner states: "Note that the assignee of the present application surely has a copy of said documentation, but has stated in the response to the Request for Information that said documentation is not readily available and could not be readily obtained." Thus, the Examiner, without any basis in fact, suggests that the Assignee improperly withheld a requested document that they held in their possession.

Applicants respectfully object to the Examiner's insistence on doubting Applicants' veracity. Moreover, Applicants believe these improper and provocative statements by the Examiner are entirely unsupported by the record, highly prejudicial to the file history, and not in accordance with the high standards of professionalism required by the Office.

In light of this situation, Applicants filed a Petition Under 37 C.F.R. § 1.182 in the prior application no. 08/820,254 requesting expungement of these improper and highly prejudicial comments appearing in the Office Action dated May 7, 2002. The Petition was filed with the Office of Petitions, but was answered by Examiner Robertson himself in an Office Action dated December 4, 2002. A copy of this Office Action dated December 4, 2002 is attached to this current Petition in order to evidence how the Examiner continued to cast doubt on the Applicants' veracity in his statements at pages 17-21, further evidencing the need for an Objective Examiner in the concurrently-filed new Continuation application.

Accordingly, Applicants respectfully request that the concurrently-filed new Continuation application, which claims priority under 35 U.S.C. § 120 to prior application no. 08/820,254, be assigned to an objective Examiner (i.e., an Examiner other than Mr. David L. Robertson of Art Unit 2186) in light of the his prejudicial statements in the prior application including the following two improper and highly prejudicial comments made by the Examiner in the Office Action dated May 7, 2002: (i) "Applicants' continued attempts to obfuscate what qualifies as prior art are noted." and (ii) "Note that the assignee of the present application surely has a copy of said documentation, but has stated in the response to the Request for Information that said documentation is not readily available and could not be readily obtained."


Please charge the requisite \$130.00 petition fee due under 37 C.F.R. § 1.17(h) to our Deposit Account No. 50-0310. The Commissioner is hereby authorized to charge any additional fees which may be necessary, or credit any overpayment, to our Deposit Account No. 50-0310.

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

Dated: June 27, 2003

By:


Robert J. Hollingshead
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